

No. 13-1069 PO

¹ All references to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

disputes such facts. Those facts may be established by stipulation, pleading of the adverse party, or other evidence admissible under the law.²

By failing to answer or otherwise respond to the complaint, Barnard has admitted the allegations it contains.³ By failing to respond to the motion for summary decision, Barnard has failed to raise a genuine issue as to the facts the Director established in his motion.⁴

Accordingly, the findings of fact are based on the allegations contained in the complaint and the admissible documents attached to the Director's motion: business records authenticated by a custodian of records affidavit and certified court documents from the criminal case against Barnard.

The following facts, based on this evidence, are undisputed.

Findings of Fact

1. Barnard was licensed as a peace officer by the Director at all relevant times.
2. On October 24, 2011, Barnard operated a motor vehicle under the influence of alcohol. Barnard backed her vehicle into another vehicle on a public road and caused damage to that vehicle. Barnard knew that she caused damage to the other vehicle. Barnard left the scene of the accident without stopping or giving information identifying herself to the victim or a police officer.
3. On July 19, 2012, in the Cole County Circuit Court, Barnard pled guilty to one count of driving while intoxicated,⁵ a Class B misdemeanor, one count of leaving the scene of an accident, a Class A misdemeanor, and one count of careless and imprudent driving,⁶ a Class A misdemeanor, for the aforementioned conduct.

² 1 CSR 15-3.446(6)(B).

³ 1 CSR 15-3.380(7)(C).

⁴ 1 CSR 15-3.446(6)(B).

⁵ § 577.010. Statutory references are to RSMo. Supp. 2012 unless otherwise noted.

⁶ § 304.012, RSMo 2000.

4. The court fined Barnard \$350 on the driving while intoxicated count and \$100 on the careless and imprudent driving count. The court suspended imposition of sentence on the leaving the scene of an accident count and placed Barnard on two years' probation.

Conclusions of Law

We have jurisdiction to hear this case.⁷ The Director has the burden of proving that Barnard has committed an act for which the law allows discipline.⁸ The Director alleges that there is cause for discipline under § 590.080.1, which provides:

1. The director shall have cause to discipline any peace officer licensee who:

* * *

(2) Has committed any criminal offense, whether or not a criminal charge has been filed.

Barnard pled guilty to one count of driving while intoxicated and one count of careless and imprudent driving and was sentenced on both counts. Both of these convictions resulted in final judgments.⁹ A final judgment resulting from a guilty plea collaterally estops the issue of whether the person committed the criminal offense.¹⁰ Barnard committed two criminal offenses.

Barnard received a suspended imposition of sentence on the leaving the scene of an accident count. Barnard's guilty plea and suspended imposition of sentence is not a final judgment.¹¹ Therefore, Barnard is not estopped from contesting it, although she did not contest it. Section 577.060.1¹² defines the crime of leaving the scene of an accident:

A person commits the crime of leaving the scene of a motor vehicle accident when being the operator or driver of a vehicle on the highway or on any publicly or privately owned parking lot or

⁷§ 590.080.2.

⁸*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App. E.D. 1989).

⁹*State v. Plastec, Inc.*, 961 S.W.2d 906, 907 (Mo.App. E.D. 1998); *State v. Hendel*, 468 S.W.2d 664, 665 - 666 (Mo.App. St.L.D. 1971).

¹⁰*James v. Paul*, 49 S.W.3d 678, 682-83 (Mo. 2001); *Carr v. Holt*, 134 S.W.3d 647, 649 (Mo. App. E.D. 2004).

¹¹*Yale v. City of Independence*, 846 S.W.2d 193, 195 (Mo. 1993).

¹²RSMo 2000.

parking facility generally open for use by the public and knowing that an injury has been caused to a person or damage has been caused to property, due to his culpability or to accident, he leaves the place of the injury, damage or accident without stopping and giving his name, residence, including city and street number, motor vehicle number and driver's license number, if any, to the injured party or to a police officer, or if no police officer is in the vicinity, then to the nearest police station or judicial officer.

Here, Barnard backed into another vehicle on a public road and damaged that vehicle. Barnard knew that she damaged the other vehicle. Barnard left the scene without stopping and giving her name, address, and other information to the victim or a police officer. Barnard therefore committed the crime of leaving the scene of an accident.

Summary

Barnard is subject to discipline under § 590.080.1(2). The hearing presently scheduled for December 4, 2013 is canceled.

SO ORDERED on October 10, 2013.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner